

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

: **CRIMINAL NO. 1:16-CR-154**

v.

: **(Chief Judge Conner)**

ROBERT DUANE HUNTER (4)

:

Defendant

:

ORDER

AND NOW, this 26th day of February, 2019, upon consideration of the request (Doc. 358) filed *pro se* by defendant Robert Duane Hunter (“Hunter”), in which Hunter requests that the court provide him with a copy of his sentencing transcript free of charge, ostensibly to assist in the preparation of an anticipated motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, (see id.), and the court observing that, pursuant to 28 U.S.C. § 753(f), a court may require the government to bear the cost of furnishing transcripts to persons proceeding *in forma pauperis* in habeas corpus proceedings, and that Hunter has been granted leave to proceed *in forma pauperis*, (Doc. 355), but the court further observing that this statutory provision generally applies only after a habeas proceeding has been instituted,¹ and that, for petitions brought under 28 U.S.C. § 2255, transcripts may be furnished only after the judge certifies that the petition “is not frivolous and that

¹ See United States v. Strausbaugh, No. 1:11-CR-96, 2015 WL 5089574, at *2 (M.D. Pa. Aug. 27, 2015) (Caldwell, J.) (collecting cases); United States v. Smith, No. 04-309, 2010 WL 11534344, at *1-2 (W.D. Pa. Aug. 2, 2010) (same); see also United States v. Cook, 362 F. App’x 238, 238-39 (3d Cir. 2010) (nonprecedential); United States v. Francisco, 342 F. App’x 828, 829 (3d Cir. 2009) (nonprecedential); United States v. Raghunathan, 288 F. App’x 2, 3-4 (3d Cir. 2008) (nonprecedential).

the transcript is needed to decide the issue presented by the suit or appeal," 28 U.S.C. § 753(f), and it appearing that Hunter has not yet filed a Section 2255 motion, and that the court consequently cannot determine whether the issues that Hunter intends to raise are frivolous or whether the transcript is necessary to decide those issues, it is hereby ORDERED that Hunter's request (Doc. 358) is DENIED without prejudice to the refiling thereof after Hunter files a Section 2255 motion.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania